Primer on IMCA Standards Enforcement

Same rules. New levels of disciplinary process.

By Robert E. Frankel, Esq.

In 2004, a small delegation of IMCA members visited the Securities and Exchange Commission (SEC) in Washington, DC. One of the first questions asked of the IMCA delegation was, “Please describe your disciplinary process and tell us, how many licenses have you stripped as a result of disciplinary matters?”

The unspoken response was, “What disciplinary procedures?”

Much has changed in the eight years since that meeting with the SEC. This article is intended as a primer for IMCA, CIMC, CPWA licenses among members of the financial services industry, the public, or IMCA: 1) violations of rules, laws, or guidelines applicable to the licensee; 2) suspension or termination of any other license, designation, or certification; and 3) improper conduct toward IMCA.

With regard to the first category, licensees are subject to discipline if they violate any of the following: the IMCA Code of Professional Responsibility (Code), the IMCA Standards of Practice (Standards), or the IMCA Disciplinary Rules and Procedures (Rules). A licensee also can be subjected to discipline by IMCA if the licensee violates other non-IMCA rules, such as certain criminal statutes (any felony or any crime less than a felony but involving theft or dishonesty). Noncriminal violations of statutes and/or the rules of self-regulating bodies (such as the Financial Industry Regulatory Authority or FINRA) also may provide the basis for discipline.

Step #1. First, the IMCA staff investigates the matter, prepares a petition (which is reviewed by IMCA’s legal counsel), and submits the petition to the PRB for review. The PRB can dismiss the petition, return it for further research, or, if good cause is shown, appoint a three-person panel to hear and review evidence concerning the petition. Licensees are required to file answers within 30 days after receipt of the petition. In drafting answers, licensees should gather all relevant information and put together a concise but thorough response to the petition, along with all supporting documentation. Care should be taken to look at the salient facts relevant to the violations alleged. Consultation with the Code, Rules, and Standards is advisable.

Step #2. A discovery phase occurs where both sides exchange information that they intend to use at the hearing, and either side may request information from the other side. The PRB delegates fact-finding authority to a hearing panel, which is made up of the licensee’s peers from a pool of volunteers who neither serve on IMCA’s board of directors nor on the PRB.

Step #3. A hearing occurs within 90 days after the end of the discovery phase. At the hearing, the petition and supporting documents set forth the violations alleged, and the accused is given the opportunity—with or without representation of counsel—to make a statement and to set forth a defense through witnesses and documents. Formal evidentiary rules are
relaxed, and questions may follow from the panel members.

Step #4. At the hearing’s conclusion, the panel meets and makes a recommendation to the PRB. The PRB thereafter reviews the recommendation and issues a decision in the case, including disciplinary measures, if any. The PRB’s decision can be appealed to an appeals board, whose decision becomes final.

Discipline
Assuming that the PRB finds that grounds for discipline exist, the PRB also will determine the appropriate remedy, which may include the following, presented in order of escalation from least to most:

Private censure. A private censure letter is sent from the PRB to the licensee, informing the licensee of the violation and urging the licensee to come into compliance.

Public censure. A public censure letter is published in venues including the IMCA website, media alerts, and/or notification to FINRA and other financial services organizations.

Suspension. A licensee’s right to use the IMCA-owned mark is suspended for a specific time period.

Termination. A licensee’s right to use the marks can be permanently terminated.

The rules also grant the PRB the authority to fashion any other or additional rules that would make one eligible for reinstatement, such as additional CE or passing the certification exam again; and 4) pay additional fees to apply.

But If Your License Does Lapse, Stop Using the Marks
If you receive a cease-and-desist letter due to letting your CIMA, CIMC, or CPWA certification lapse, you should ensure compliance with such cease-and-desist notice and document all efforts to comply. Misuse of a mark is a significant factor considered by the Admissions Committee in reinstatement applications, and ignoring a request to stop using marks when one is not licensed can hurt an applicant.

Disciplinary Statistics
Since that fateful day at the SEC in 2004, IMCA initiated a disciplinary process and hired a part-time paralegal in 2007. Thereafter, the Rules, Code, and Standards have been drafted and/or revised, and IMCA has implemented a formal disciplinary process. To enhance those efforts, in 2011 IMCA hired a full-time lawyer who is focused primarily on compliance issues, resulting in an increasingly robust disciplinary process that, among other things, helps protect the public and strengthen the marks.

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Endnotes
1 In the event of any discrepancy between the Rules and this article, the Rules shall control.

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